

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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HOUSE BILL 94

Short Title: Amend Environmental Laws 2013. (Public)

Sponsors: Representatives McElraft, Samuelson, and McGrady (Primary Sponsors).

For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site.

Referred to: Regulatory Reform Subcommittee on Environmental, if favorable, Environment, if favorable, Finance.

February 13, 2013

A BILL TO BE ENTITLED

AN ACT TO AMEND CERTAIN ENVIRONMENTAL AND NATURAL RESOURCES LAWS TO (1) ALLOW 10-YEAR PHASE LANDFILL DEVELOPMENTS TO APPLY FOR A PERMIT TO OPERATE; AND (2) CLARIFY THE PROCESS FOR APPEALS FROM CIVIL PENALTIES ASSESSED BY A LOCAL GOVERNMENT THAT HAS ESTABLISHED AND ADMINISTERS AN EROSION AND SEDIMENTATION CONTROL PROGRAM APPROVED UNDER G.S. 113A-60 AND PROVIDE THAT CIVIL PENALTIES ASSESSED BY A LOCAL GOVERNMENT PURSUANT TO THE SEDIMENTATION POLLUTION CONTROL ACT OF 1973 SHALL BE REMITTED TO THE CIVIL PENALTY AND FORFEITURE FUND, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. Section 15.1 of S.L. 2012-187 reads as rewritten:

"SECTION 15.1. No later than July 1, 2013, the Commission for Public Health shall adopt rules to allow applicants for sanitary landfills the option to (i) apply for a permit to construct and operate a five-year phase of landfill development and apply to amend the permit to construct and operate subsequent five-year phases of landfill development; or (ii) apply for a permit to construct and operate a 10-year phase of landfill development and apply to amend the permit to construct and operate subsequent 10-year phases of landfill development, with a limited review of the permit five years after issuance of the initial permit and five years after issuance of each amendment for subsequent phases of development. No later than July 1, 2013, the Commission shall also adopt rules to allow applicants for permits for transfer stations the option to (i) apply for a permit with a five-year duration to construct and operate a transfer station; or (ii) apply for a permit with a 10-year duration to construct and operate a transfer station, with a limited review of the permit five years after issuance of the initial permit and five years after issuance of any amendment to the permit. In developing these rules, the Department of Environment and Natural Resources shall examine the current fee schedule for permits for sanitary landfills and transfer stations as set forth under G.S. 130A-295.8 and formulate recommendations for adjustments to the current fee schedule sufficient to address any additional demands associated with review of permits issued for 10-year phases of landfill development and the issuance permits with a duration of up to 10 years for transfer stations. The Department shall report its findings and recommendations, including any legislative proposals, to the Environmental Review Commission on or before December 1, 2012. The rules required by this section shall not become effective until the fee schedule set forth under



1 G.S. 130A-295.8 is amended as necessary to address any additional demands associated with
2 review of permits issued for 10-year phases of landfill development and the issuance of permits
3 with a duration of up to 10 years to construct and operate transfer stations."

4 **SECTION 2.** G.S. 113A-64 reads as rewritten:

5 **"§ 113A-64. Penalties.**

6 (a) Civil Penalties. –

- 7 (1) Any person who violates any of the provisions of this Article or any
8 ordinance, rule, or order adopted or issued pursuant to this Article by the
9 Commission or by a local government, or who initiates or continues a
10 land-disturbing activity for which an erosion and sedimentation control plan
11 is required except in accordance with the terms, conditions, and provisions
12 of an approved plan, is subject to a civil penalty. The maximum civil penalty
13 for a violation is five thousand dollars (\$5,000). A civil penalty may be
14 assessed from the date of the violation. Each day of a continuing violation
15 shall constitute a separate violation.
- 16 (2) The Secretary or a local government that administers an erosion and
17 sedimentation control program approved under G.S. 113A-60 shall
18 determine the amount of the civil penalty and shall notify the person who is
19 assessed the civil penalty of the amount of the penalty and the reason for
20 assessing the penalty. The notice of assessment shall be served by any means
21 authorized under ~~G.S. 1A-1, Rule 4, and~~ G.S. 1A-1. A notice of assessment
22 by the Secretary shall direct the violator to either pay the assessment or
23 contest the assessment within 30 days by filing a petition for a contested
24 case under Article 3 of Chapter 150B of the General Statutes. If a violator
25 does not pay a civil penalty assessed by the Secretary within 30 days after it
26 is due, the Department shall request the Attorney General to institute a civil
27 action to recover the amount of the assessment. A notice of assessment by a
28 local government shall direct the violator to either pay the assessment or
29 contest the assessment within 30 days by filing a petition for hearing with
30 the local government as directed by procedures within the local ordinances
31 or regulations adopted to establish and enforce the erosion and sedimentation
32 control program. If a violator does not pay a civil penalty assessed by a local
33 government within 30 days after it is due, the local government may institute
34 a civil action to recover the amount of the assessment. The civil action may
35 be brought in the superior court of any county where the violation occurred
36 or the violator's residence or principal place of business is located. A civil
37 action must be filed within three years of the date the assessment was due.
38 An assessment that is not contested is due when the violator is served with a
39 notice of assessment. An assessment that is contested is due at the
40 conclusion of the administrative and judicial review of the assessment.
- 41 (3) In determining the amount of the penalty, the Secretary or a local
42 government shall consider the degree and extent of harm caused by the
43 violation, the cost of rectifying the damage, the amount of money the
44 violator saved by noncompliance, whether the violation was committed
45 willfully and the prior record of the violator in complying or failing to
46 comply with this Article-~~Article~~, or any ordinance, rule, or order adopted or
47 issued pursuant to this Article by the Commission or by a local government.
- 48 (4) Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 776, s. 11.
- 49 (5) The clear proceeds of civil penalties collected by the Department or other
50 State agency or a local government under this subsection shall be remitted to
51 the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

1 ~~Civil penalties collected by a local government under this subsection shall be~~
2 ~~credited to the general fund of the local government as nontax revenue.~~
3 (b) Criminal Penalties. – Any person who knowingly or willfully violates any provision
4 of this Article or any ordinance, rule, regulation, or order duly adopted or issued by the
5 Commission or a local government, or who knowingly or willfully initiates or continues a
6 land-disturbing activity for which an erosion and sedimentation control plan is required, except
7 in accordance with the terms, conditions, and provisions of an approved plan, shall be guilty of
8 a Class 2 misdemeanor that may include a fine not to exceed five thousand dollars (\$5,000)."
9 **SECTION 3.** This act is effective when it becomes law.